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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/829,497

Applicant(s)

WERTH, ALBERT A.

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12 and 15 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/9/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 contains the trademark/trade name "Kevlar sock". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe "Kevlar sock" and, accordingly, the identification/description is indefinite.

Claim Objections

3. Claim 1 is objected to because of the following informalities: the claimed limitation "the dispensing port" appears to lack antecedent basis in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4,6,8-9,12,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haber et al. (5,257,978) in view of Lim et al. (5,927,956).

Haber et al. disclose a dispenser valve assembly (2) having a line in fluid communication to a source of fluid (col. 3, ll. 35-38), which comprising a tube (4) fluidly connected to the line and connected to a dispensing nozzle (78) at an opposing end, the tube defining a fluid passageway therein from the line to the dispensing port (78), and means for selectively opening and closing the fluid passageway in the tube (col. 3, ll. 63-68), a leaf spring mechanism (10) connected to a pinching member (24), a pivot member (42), an actuator (80), the leaf spring is retained within pockets to prevent excess erosion as seen in Figure 2A and note: it is inherent that the leaf spring of Haber et al. is retained within pockets to prevent excess erosion in as the applicant's claimed invention, a housing (41). Haber et al. lack the tube is connected to the line by a barb fitting. Lim et al. teach the use of a barb fitting (42,44) in a tube (16), where the tube is connected to a line (12,14) via the barb fitting as seen in Figure 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the barb fitting of Lim et al. onto the inlet tube of Haber et al. in order to provide an alternate means of connecting the tube to the line.

Note: the term "water and for a refrigerator" in the preamble has not been given patentable weight, since applicant is claiming a source of fluid, which does not have to be "water". Further, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where

the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With respect to claim 12, the claimed limitation "further comprising a bezel box having an open frame "

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have the box (41) of Haber et al and Lim et al. to be bezel, because Applicant has not disclosed that having the bezel box provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the box of Haber et al and Lim et al., because the box of Haber et al and Lim et al. secure the tube.

Therefore, it would have been an obvious matter of design choice to modify the box of Haber et al and Lim et al. to obtain the invention specified in claim (12).

With respect to claim 15, the claimed subject matter "wherein the dispensing nozzle is integrally formed with a barb fitting.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrally joined the barb fittings of Haber et al and Lim et al., since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

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6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haber et al. (5,257,978) in view of Lim et al. (5,927,956) as applied to claim 1 above, and further in view of Ulbing (5,380,172).

Haber et al.-Lim et al. in combination have taught all the features of the claimed invention except that the tube is covered by a snug fit Kevlar sock. Ulbing teaches the use of a tube (44), where the tube is covered by a snug fit Kevlar sock (col. 7, ll. 59-68).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the snug fit Kevlar sock of the flexible tube of Haber et al. and Lim et al. as taught by Ulbing in (col. 7, ll. 59-68), in order to prevent the tube from expanding, as such material shows no sign of stretch either longitudinally or radially.

7. Claims 5,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haber et al. (5,257,978) in view of Lim et al. (5,927,956) as applied to claim 1 above, and further in view of Patel (6,830,076).

Haber et al.-Lim et al. in combination have taught all the features of the claimed invention except that the tube is covered by a snug fit Kevlar sock. Patel teaches the use of a tube (120) made of silicone, where the tube is covered with Kevlar sock (col. 6, ll. 19-27).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tube of Haber et al. and Lim et al. to be made of silicone and covered with Kevlar as taught by Patel in (col. 6, ll. 19-27), in order to provide an abrasion resistance tube.

Allowable Subject Matter

8. Claims 10-11 and 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Norris 2,377,261, Kempf 4,407,434, Maldonado 4,895,276, Mehus 4,372,345, Christine 4,256,242, Weimer et al. 4,961,508, Norris 3,598,289 and Jones 1,677,453 disclose other types of dispensing valve.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

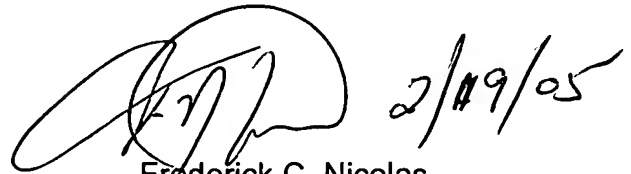
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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
February 19, 2005

A handwritten signature in black ink, appearing to read 'F. Nicolas', is written over a large, faint circular stamp. To the right of the signature, the date '2/19/05' is handwritten in black ink.

Frederick C. Nicolas
Patent Examiner
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